

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:

Request for Review and Waiver)	
of the Decision of the)	
Universal Service Administrator by)	
)	
Henderson County Public School District)	CC Docket No: 02-6
BEN Number: 127090)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW

INTRODUCTION

Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission.¹ Henderson County Public School District (HCPSD) hereby appeals the current action taken by USAC in the following case.

BACKGROUND

HCPSD received their funding commitment decision letter on July 6, 2006, for Form 471 No. 512090. This Application contained funding requests for the District's Telecom and Internet Access with BellSouth Telecommunications. HCPSD then filed their Form 486 and on August 9, 2006, the District received Program Compliance questions regarding the Form 486. HCPSD was requested to send a copy of their approved technology plan and to provide a creation date for their technology plan. HCPSD responded to the questions on August 10, 2006 by e-mail, and was notified December 12, 2006, that

¹ 47 C.F.R. § 54.719(c).

USAC had rejected the Form 486. The SLD had determined that the District did not have a draft technology plan in place before filing their Form 470. HCPSD filed an appeal and on January 16, 2007, USAC denied the appeal. A copy of the Administrator's Decision on Appeal is attached as Exhibit A.

DISCUSSION

The requirements for what a technology plan must contain and by when it must be certified are contained in 47 C.F.R. § 54.508. 47 C.F.R. § 54.508(c) requires that an applicant have an approved technology plan in place before they begin receiving services.² This section also refers back to 47 C.F.R. §§ 54.504(b)(2)(vii) and (c)(1)(v), which require an applicant to certify that at the time the Form 470 and Form 471, respectively, were filed, the applicant has an approved technology plan, or that a technology plan will be approved.³

In the current case, HCPSD provided USAC with a link to their approved technology plan. A copy of the letter sent to HCPSD approving the technology plan is attached as Exhibit B. As this letter shows, the District's technology plan was in place and approved as of February 15, 2006. This means the HCPSD had an approved technology plan in place before services for Funding Year 2006 would have been received.

USAC denied the District Form 486 saying the creation date on the plan was after the HCPSD had filed their Form 470 requesting services for Funding Year 2006. For multiple reasons, the District does not believe this is a valid reason to reject the Form 486.

First, the certifications required by an applicant in 47 C.F.R. § 54.504, only require an applicant to certify that an approved technology plan will be in place before services will

² 54.508(c) states, "Timing of certification. As required under 54.504(b)(2)(vii) and (c)(1)(v), applicants must certify that they have prepared any required technology plans. They must also confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.

³ 54.504(b)(2)(iv) states in part, "...the technology plan(s) will be approved by a state or other authorized body; ' 54.504(c)(1)(v) contains the same certification language as part of the Form 471.

begin. HCPSD made this certification and did insure an approved technology plan was in place before the 2006 Funding Year began on July 1, 2006. Proof of the approved plan was provided to the SLD.

Second, HCPSD did have a draft technology plan in place before the District's Form 470 was filed. When answering the Program Compliance questions, the District mistakenly provided the SLD with the date of January 9, 2006, as the creation date. This is the date on the first page of the District's technology plan; since this is the date the Board of Education was presented with the plan for approval. The actual plan was first submitted to the Technology Consultant for the North Carolina Department of Public Instruction on July 28, 2005. A copy of an e-mail from Mary Lou Daily from the North Carolina Department of Public Instruction confirming this was the date of the original draft is included as Exhibit C. This date is before HCPSD posted their Form 470 on November 10, 2005.

HCPSD is in compliance with the reasoning behind the revising of technology plan approval times. In the FCC 5th Report and Order, the FCC revised the requirements for technology plan timing.⁴ With this decision, the FCC recognized that the time frame to get a technology plan approved may not fit within the application cycle for e-rate. The FCC has not waived the requirement for a technology plan as this ensures requested services fit within the District's technology goals. As shown above, HCPSD did have a draft technology plan before filing their Form 470.

Also, HCPSD has been involved in the E-rate program since it began in 1998. At the time HCPSD filed their Form 470 to request services for Funding Year 2006, they

⁴ See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, para. 56 (2004) (*Schools and Libraries Fifth Report and Order*), which states, "We revise section 54.504(b)(2)(vii) so that applicants with technology plans that have not yet been approved when they file FCC Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service. In making this change, we recognize that the timing of technology plan approval in particular states and localities may not coincide perfectly with the application cycle of the schools and libraries support mechanism. At the same time, we emphasize that applicants still are expected to develop a technology plan prior to requesting bids on services in FCC Form 470; all that we are deferring is the timing of the approval of such plan by the state or other approved certifying body."

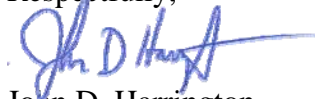
already had an approved technology plan in place.⁵ This would have helped to ensure HCPSD only requested services which would be consistent with their overall technology goals.

HCPSD is a long term user of the E-rate program who has always been in compliance with the FCC's regulations on technology plans. At the time HCPSD requested services for Funding Year 2006, a draft technology plan was in place. Additionally, the prior approved technology plan would have provided HCPSD enough guidance to request services consistent with HCPSD technology goals.

SUMMARY

HCPSD respectfully requests the FCC to find a valid Form 486 was submitted to USAC and that the case be remanded back to the SLD with orders to process HCPSD's Form 486.

Respectfully,



John D. Harrington
Funds For Learning, LLC
On Behalf of Henderson County Public School District

501 South Coltrane
Edmond, OK 73003
405.341.4140
jharrington@fundsforlearning.com

⁵ A copy of the approval for HCPSD's prior tech plan is attached as Exhibit D.

Exhibit A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

January 16, 2007

Rick Fender
Henderson County Public School District
414 4th Avenue West
Hendersonville, NC 28739-4254

Re: Applicant Name: HENDERSON COUNTY PUB SCH DIST
Billed Entity Number: 127090
Form 471 Application Number: 512090
Form 486 Application Number: 486 Not Certified
Funding Request Number(s): 1408529, 1409093
Your Correspondence Received: December 18, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Form 486 Rejection Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1408529, 1409093
Decision on Appeal: **Denied**
Explanation:

- Upon review of the appeal letter, the relevant facts, and supporting documentation, USAC determined that the Form 486 for this funding request was properly rejected. On August 9, 2006, the authorized contact was asked to provide a copy of the district's technology plan and the creation date of that plan. In an email dated August 10, 2006, the authorized contact provided the technology plan with a creation date of January 9, 2006. The Form 470 number referenced for FRNs 1408529 and 1409093 is 212200000548420. This Form 470 has a posting date of November 10, 2005, which is before the creation date of January 9, 2006. The funding requests approved in your Funding Commitment Decision Letter dated July 6, 2006 included Ethernet Broadband Service and Internet Access, which are not basic telephone service. As is noted on USAC's

website, <http://www.usac.org/sl/applicants/step02/technology-planning/default.aspx>, if an applicant is seeking discounts for more than basic telephone service, applicants are required to have a written technology plan that covers the current funding year at the time the Form 470 is filed. You have failed to provide evidence on appeal that USAC erred in its original decision. Consequently, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Exhibit B



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Howard N. Lee, Chairman

DEPARTMENT OF PUBLIC INSTRUCTION June St. Clair Atkinson, ED.D., State Superintendent

WWW.NCPUBLICSCHOOLS.ORG

February 15, 2006

RECEIVED

FEB 21 2006

Henderson County Schools
414 4th Ave West
Hendersonville, NC 28739-4261
Attn: Dr. Stephen L. Page, Superintendent

Dear Dr. Page:

Congratulations! Your LEA technology plan has been approved. This approval was granted by the North Carolina State Board of Education on February 2, 2006. This approval qualifies your school system for School Technology Trust Fund monies (PRC15), NCLB Enhancing Education through Technology grant dollars, E-rate discounts, and other public and private grants.

Based on Senate Bill 622, legislation passed by the 2005 General Assembly, monitoring of the implementation of your LEA technology plan will begin early in the summer of 2006. Your regional consultant will set up a site visit with your technology director during which they will discuss the progress your system is making toward the strategic priorities, goals, and strategies delineated in your tech plan. I am attaching that monitoring document to this letter.

In order to assist us with the monitoring process and in order for us to comply with additional legislative requirements, please forward to the attention of Mr. Benny Hendrix a CD that aggregates the following information:

- The final version of your LEA Technology Plan
- The LAN/WAN diagrams
- The technical infrastructure forms submitted to ITS

The CD can be mailed in care of the Division of Instructional Technology to the address below.

We know that the completion of this plan represents a great deal of hard work on the part of your system's technology committee, teachers, and especially your system-level media and technology staff. It is an affirmation of your commitment to preparing children for living and working in the information age. It also represents an understanding of the role that technology and information literacy will play in lifelong learning, a necessity in this global economy. This plan's consistent evaluation and updating ensures that your teachers and students will have the resources necessary for productive teaching and learning in the 21st century.

Again, I congratulate you on this success, and look forward to continued collaboration between the Department of Public Instruction's Division of Instructional Technology and Henderson County Schools.

Sincerely,

Frances Bryant Bradburn
Director, Instructional Technology

Friday
2-24-06
Weekly Update

cc: Mike Neyman, Senior Director of Technology & Media
Dr. Robert Bellamy, Associate Superintendent
Mary Lou Daily, Regional Technology Consultant
Wynn Smith, Section Chief

Attachment

INSTRUCTIONAL TECHNOLOGY

FRANCES B. BRADBURN, DIRECTOR | fbradbur@dpi.state.nc.us
6364 Mail Service Center, Raleigh, North Carolina 27699-6364 | (919) 807-3292 | Fax (919) 807-3290

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Copy to Sam
Staff
2-22-06
BCB

Exhibit C

Printed by: Christine Weis

Title: Re: E-Rate 471 Application # 512090 : co

Wednesday, January 31, 2007 2:08:51 PM

Page 2 of 3

>>> On 1/30/2007 at 4:09 PM, Mary Lou Daily <mdaily@dpi.state.nc.us> wrote:

Christine,

The first draft of the technology plan that was submitted to me for review was created July 28, 2005. NCDPI received The Henderson County Technology plan on October 31, 2005. NCDPI has on file a copy of the Henderson County Technology Plan stamped and initialed as being received on October 31, 2005. If you need this documentation please email Susan McKinney with your Fax number.

Please let me know if you need any additional information,
Mary Lou.

Mary Lou Daily
Technology Consultant
Technology Planning and Support
North Carolina Dept. of Public Instruction
Instructional Technology
6364 Mail Service Center
Raleigh, NC 27699-6364
mdaily@dpi.state.nc.us
919-306-0629

All email correspondence to and from this address! is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

>>> Benny Hendrix 1/30/2007 12:54 PM >>>

Christine, I am so sorry to hear about this denial from SLD/USAC. Can you fax me the complete paper trail of all the denial letters and your documentation back to the SLD/USAC. The "creation" date is the date the plan was created there in Henderson for the particular cycle involved here which is before the approval of your local board or submission to NC DPI/Frances Bradburn. If you can locate the "creation" date of when that particular plan was drafted, who was the person that pulled the draft together etc. (Not Mike N. but who actually drafted the first version and find a date for then). In the meantime let me check some more. Kathy's advice is correct! and an FCC appeal will need to be filed if I can't get any further with SLD (knowing that you have now two denials on this).

If you can pull the full documentation trail together for me to review I would appreciate it. If the docs are electronic please email them, if paper please fax only to 919-882-9996. This fax will create a PDF and email it to me.

Thanks

Benny E. Hendrix
Office of E-Rate / School Connectivity
State Education E-Rate Coordinator
NC Dept. of Public Instruction
Office of Technology Services
Educ. Bldg., Rm. 5079
301 N. Wilmington St.
Raleigh, NC 27601-2825
6364 Mail Service Center, Raleigh, NC 27699-6364

Exhibit D

**PUBLIC SCHOOLS OF NORTH CAROLINA**

STATE BOARD OF EDUCATION :: Howard N. Lee, Chairman

WWW.NCPUBLICSCHOOLS.ORG

DEPARTMENT OF PUBLIC INSTRUCTION :: Patricia N. Willoughby, State Superintendent

December 14, 2004

Henderson County Schools
414 4th Ave West
Hendersonville, NC 28739-4261
Attn: Dr. Stephen Page, Superintendent

Dear Dr. Page:

Your LEA technology plan addendum has been received and filed with your original plan. This addendum qualifies your school system for School Technology Trust Fund monies (PRC15), E-rate discounts, and other public and private grants.

The completion of this addendum represents a great deal of hard work on the part of your system's technology team. It is an affirmation of your commitment to preparing children for living and working in the information age. It also represents an understanding of the role that technology and information literacy will play in lifelong learning, a necessity in this global economy. This plan's consistent evaluation and updating ensures that your teachers and students will have the resources necessary for productive teaching and learning in the 21st century.

I look forward to continued collaboration between the Department of Public Instruction's Division of Instructional Technology and Henderson County Schools.

Sincerely,

A handwritten signature in cursive script that reads "Frances B. Bradburn".

Frances Bryant Bradburn

FBB/WMS/slm

c: Mike Neyman, Senior Director for Technology & School Accountability
Bob Bellamy

INSTRUCTIONAL TECHNOLOGY

FRANCES B. BRADBURN, DIRECTOR :: EMAIL bradburn@dpi.state.nc.us

2001 Mail Service Center :: Raleigh, North Carolina 27601-8744 :: 919.807.9200 :: 919.807.9200